

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

MANUEL DE JESUS ROSARIO,

Plaintiff,

-against-

MIS HIJOS DELI CORP., PALMA GROCERY CORP.,  
251 E 123<sup>RD</sup> ST. REALTY, LLC, JOSE PALMA,  
LEONIDA COLLADO, and JUNIOR PALMA,

Defendants.

**No. 15-CV-6049 (LTS)(DCF)**

**DEFENDANT'S LOCAL RULE**

**56.1 STATEMENT OF  
MATERIAL FACTS**

Defendant, 251 E. 123<sup>rd</sup> St. Realty, LLC (hereinafter, “Realty” or “the building”), by its attorneys, Rodriguez Law, P.C. and the Law Offices of Martin E. Restituyo, P.C., in support of its Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56, submit the following Statement of Material Facts pursuant to Rule 56.1 of the Local Civil Rules of the United States District Courts for the Southern and Eastern Districts of New York:

1. Realty is a domestic limited liability company organized under the laws of the State of New York, with a principal place of business at 251 E. 123<sup>rd</sup> St., New York, New York 10035. Ex.1.<sup>1</sup>

2. Realty owns the property located at 251 E. 123<sup>rd</sup> St., New York, New York 10035. Ex. 2 (Palma Dep. 78:7-10).<sup>2</sup>

3. Jose Palma Sr. (hereinafter “Jose Palma”) is the sole owner of Realty. Ex. 3, Articles of Organization of 251 E. 123<sup>rd</sup> Realty, LLC.

4. The building is five stories tall, with a grocery store on the first floor and residential units above. Ex. 4, Certificate of Occupancy.

---

<sup>1</sup> References to “Ex. \_\_\_\_” refer to the exhibits attached to the Declaration of Declaration of Argilio Rodriguez in Support of Defendant’s Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56.

<sup>2</sup> Deposition transcripts are being referenced as follows: Deposition of Jose Joaquin Palma is being cited as “Palma Dep \_\_\_\_”, Deposition of Leonida Collado is being cited as “Collado Dep \_\_\_\_”, Deposition of Jose Palma Jr s/h/a Junior Palma is being cited as “Junior Dep \_\_\_\_”, and Deposition of Manuel de Jesus Rosario is being cited as “Rosario Dep \_\_\_\_”.

5. The commercial space is and has always been rented by a grocery store. Palma Grocery Corp. (hereinafter “Palma Grocery”) occupied the commercial space from 1978 (Ex. 5, Collado Dep. 9:16-17) to May 2013 (Ex. 6, Junior Dep. 13:16-18), and Mis Hijos Deli Corp. has occupied the commercial space from June 2013 to the present. (Junior Dep. 9:10-12).

6. Jose Palma was never an owner or shareholder of Palma Grocery. Ex. 2 (Palma Dep. 13:16-18); Ex. 5 (Collado Dep. 8:8-14, 10:24-11:3).

7. Plaintiff, Manuel de Jesus Rosario, commenced working at Palma Grocery in 1995. Ex. 7 (Rosario Dep. 34:19-21). He was hired by Reuben, the store manager. (Rosario Dep. 35:20 – 36:1)

8. Even though Plaintiff strains to suggests that Jose Palma, through Reuben, was the one that hired him to work at the Palma Grocery (Rosario Dep 35:6 – 36:19), he admits that Jose Palma never hired him to work for the building. (Rosario Dep. 69:23-70:1).

9. Moreover, when asked whether anyone other than Jose Palma had hired him to work at the building, he also responded “No.” (Rosario Dep. 69:4-7),

10. When asked directly whether he worked for the building, Plaintiff unequivocally stated “No. I didn’t work for the building.” (Rosario Dep. 61:11-12).

11. Plaintiff further acknowledges that working at the building was not part of his job (Rosario Dep. 63:7-8, 66:20-22, 68:16-69:3), that he never got compensated for it (Rosario Dep. 63:9-11), and that he was never told that he would be compensated for it (Rosario Dep. 69:8-10).

12. Indeed, Plaintiff’s only claimed connection to Realty was that allegedly certain managers at the grocery store, not one of which was Jose Palma, would send him to clean the building (Rosario Dep. 61:11-17, 63:2-4, 64:12-21).

13. Even so, Plaintiff admits that there was no set schedule for working at the building (Rosario Dep. 63:17-18, 64:22 – 65:4), and merely suggests that from 1995 – 2003 “sometimes” Reuben would send him to clean the building “three or four times a week” (Rosario Dep. 62:23 – 63:14), and that after 2003 “Leonida Collado and Junior Palma” would send him the “same two, three, four times a week.” (Rosario Dep. 64:6 – 21).

14. Even after making this bold assertion, however, Plaintiff failed to directly answer the question of whether anyone supervised his work at the building; instead, choosing to, on multiple occasions, sidestep the question by noting that Reuben “saw it, but he had nothing to say, because it was well done” (Rosario Dep. 66:5 – 22), or noting that Jose Palma didn’t need to supervise because “There’s nothing to supervise. Everything I do is well done.” (Rosario Dep. 69:23 – 70:5).

15. Even if this were enough to establish an employer/employee relationship between Plaintiff and Realty, which it is not, Plaintiff fails to establish that Realty was an “enterprise engaged in commerce” given that Realty’s gross revenues during the statutory period fall well below the required threshold of \$500,000 or more. As detailed below Realty’s gross revenues were as follows:

- a. In 2012 Realty had gross revenues of \$128,905. **EXHIBIT 8.**
- b. In 2013 Realty had gross revenues of \$175,424. **EXHIBIT 9.**
- c. In 2014 Realty had gross revenues of \$193,543. **EXHIBIT 10.**
- d. In 2015 Realty had gross revenues of \$223,271. **EXHIBIT 11.**

Dated: New York, New York  
October 8, 2016

/s/ Argilio Rodriguez  
By: Argilio Rodriguez, Esq.  
Rodriguez Law, P.C.  
Empire State Building  
350 Fifth Avenue, Suite 5909

New York, NY 10118  
(212) 960-3305  
[argilio@lawrodriguez.com](mailto:argilio@lawrodriguez.com)

Martin E. Restituyo, Esq.  
Law Offices of Martin Restituyo, P.C.  
1345 Avenue of the Americas, 2<sup>nd</sup> Floor  
New York, New York 10105  
Tel: 212-729-7900  
Fax: 212-729-7490  
[restituyo@restituyolaw.com](mailto:restituyo@restituyolaw.com)

*Attorneys for Defendants*